Case 1:21-mj-00901-RER Document 5 Filed 08/05/21 Page 1 of 22 PageID #: 27 1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK 2 BROOKLYN 3 UNITED STATES OF AMERICA, Docket No. 1:21-MJ-00901-RER-1 4 Plaintiff, Brooklyn, New York 5 Wednesday, August 4, 2021 V. 6 OCTAVIAN OCASIO, 7 Defendant. 8 9 VOLUME I TRANSCRIPT OF ARRAIGNMENT 10 BEFORE THE HONORABLE RAMON E. REYES UNITED STATES MAGISTRATE JUDGE 11 **APPEARANCES:** 12 For the Plaintiff: US Attorney's Office EDNY 13 By: BENJAMIN L. WEINTRAUB, AUSA 271-A Cadman Plaza East 14 Brooklyn, New York 11201 15 For the Defendant: Federal Defenders of NY By: KANNAN SUNDARAM 16 One Pierrepont Plaza 16th Floor 17 Brooklyn, New York 11201 18 19 Transcription Service: Opti-Script, Inc. P.O. Box 77 20 Winfield, PA 17889 800-494-7500 2.1 Proceedings recorded by electronic sound recording; transcript 22 produced by transcription service. 23 24 25

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Casle 1:21-mi-00901-RER Document 5 Filed 08/05/21 Page 2 of 22 PageID #: 28 BROOKLYN, NEW YORK, WEDNESDAY, AUGUST 4, 2021: 1 (Call to Order of the Court.) 2 3 THE CLERK: On the record. This is 21-mj-901, USA 4 versus Octavian Ocasio. We're on for an arraignment. 5 Counsel, please state your appearances starting with 6 the Government. 7 UNIDENTIFIED SPEAKER: Say it again. Hello. 8 THE COURT: If that's Jose Reyes (ph.), this is 9 Magistrate Judge Reyes. Please mute your phone. We'll get to 10 you in a moment. We need to start the proceeding, okay? 11 UNIDENTIFIED SPEAKER: Okay. 12 MR. WEINTRAUB: Benjamin Weintraub for the United 13 States, Your Honor. 14 MR. SUNDARAM: Kannan Sundaram, Federal Defenders for 15 Mr. Ocasio. Good afternoon -- evening. 16 THE COURT: Good afternoon. This is Magistrate Judge 17 Reyes. All those who have phoned in to this proceeding, I 18 request that you mute your phones. And if I need to speak with 19 anyone individually, we will ask you to unmute at that point. 20 Is Special Agent Ashton Buckner (ph.) on the line? 21 MR. ALBANO: Judge, this is his partner, NYPD 22 Detective Albano (ph.). 23 THE COURT: He's not around? 24 MR. ALBANO: I will get him. 25 THE COURT: Okay. Because I need him to -- to swear Opti-Script, Inc. | 800-494-7500

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him in on the removal. 1 MR. ALBANO: Okay, Your Honor. I'll grab him. 2 UNIDENTIFIED SPEAKER: Hello. 3 THE CLERK: If you're calling in, please mute your 4 phone until the judge speaks to you and tells you to unmute. 5 UNIDENTIFIED SPEAKER: All right. Thank you, sir. 6 THE CLERK: Thank you. 7 THE COURT: While we're waiting for the agent, did 8 Mr. Ocasio sign a identity theft waiver? 9 MR. SUNDARAM: Your Honor, when I interviewed Mr. 10 Ocasio at the courthouse I had not yet received the waiver 11 form, but I went through all of his rights with respect to 12 identity hearing and confirmed that he does not contest that 13 he's the person who's the subject of the indictment and that he 14 would be willing to waive an identity hearing. 15 I then contacted your chambers and I have sent a 16 form, an identity waiver form signed by me. I've sent two 17 copies, one signed by me and one with my signature on behalf of 18 Mr. Ocasio. The other one, I left his signature blank in case 19 the Court would prefer to sign for him with his consent. And I 20 checked with chambers and they said that that would be 21 acceptable, which is why I am in my office doing the 2.2 arrangement from here. 23 THE COURT: Okay. Lewis, do we have that? 24 THE CLERK: I'm forwarding it to you now, Judge. 25

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THE COURT: Great. Thank you. 1 UNIDENTIFIED SPEAKER: The agent's here, Judge. 2 THE COURT: Right. 3 ASHTON BUCKNER, PLAINTIFF'S WITNESS, SWORN 4 THE COURT: Great. Mr. Ocasio, the purpose of this 5 proceeding is to make sure that you are aware and understand 6 the charges that are pending against you; to make sure that you 7 know your rights as a defendant in a criminal case; to discuss 8 the removal process with you; and to address the question of 9 whether you should be removed in custody or granted bail. 10 Before we get into all of that, Mr. Sundaram, does 11 Mr. Ocasio have any objection to proceeding by video? 12 MR. SUNDARAM: No. He does not. 13 THE COURT: Okay. So Mr. Ocasio, you have the right 14 to remain silent. You do not have to make a statement to 15 anyone. If you start to make a statement, you can stop at any 16 time. If you have made statements in the past, you are not 17 required to make statements in the future. Any statements that 18 you do make can and will be used against you in your case 19 except for statements that you make to your attorney. Those 20 are privileged. Do you understand, sir? 21 THE DEFENDANT: Yes, Your Honor. Thank you. 22 THE COURT: You also have the right to be represented 23 by an attorney throughout your case, and if you can't afford an 24 attorney, the court will appoint one to represent you. 25

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In connection with that, I've been given a financial 1 affidavit that includes some financial information about you, 2 your monthly income of 2,500, the fact that you have a bank 3 account with approximately 6,000 in it. You have a car and 4 some other property, but you also have expenses. 5 Based on the information contained in this financial 6 affidavit, I find that Mr. Ocasio is entitled to 7 court-appointed counsel and I'll appoint Mr. Sundaram and the 8 Federal Defenders of New York to represent him. 9 Mr. Ocasio, and indictment has been issued against 10 you and others out of the Southern District of Texas charging 11 you with wire fraud and conspiracy to commit wire fraud. Have 12 you seen this? 13 THE DEFENDANT: Yes. I have, Your Honor. 14 THE COURT: And you briefly discussed the charges 15 with Mr. Sundaram? 16 THE DEFENDANT: Yes. 17 THE COURT: Do you understand the charges? 18 THE DEFENDANT: Yes. I do. Yes. I do. 19 THE COURT: Mr. Sundaram explained a little while ago 20 that he also discussed with you the concept or the fact that 21 you could have in this district an identity hearing, which is a 2.2 hearing to determine whether you are the Octavian Ocasio that's 23 in the indictment and that you have decided to waive that 24 hearing; is that correct? 25

Case 1:21-mj-00901-RER Document 5 Filed 08/05/21 Page 6 of 22 PageID #: 32 THE DEFENDANT: Yes, Your Honor. It is. 1 THE COURT: All right. And he has given me -- and 2 I'm sorry I'm looking at a -- you're not seeing my full face 3 because I'm looking at another computer screen which has the 4 documents on them. 5 THE DEFENDANT: It's okay. 6 THE COURT: I'm not being rude in any way. He has 7 given me a signed waiver form that he signed, but there is no 8 signature for you in that form and it says that you wish to 9 waive your identity hearing. 10 THE DEFENDANT: Yes, Your Honor. 11 THE COURT: Do you have any objection to me signing 12 that form for you? 13 THE DEFENDANT: No. I do not. 14 THE COURT: Okay. I will sign that form for him. 15 We'll make it part of the record. 16 What is the Government's position with respect to 17 bail? 18 MR. WEINTRAUB: The Government opposes bail on the 19 grounds that there is no package in the Government's view that 20 can reasonably assure the Defendant's appearance in court. I 21

MR. WEINTRAUB: No. Sure. Sure, Your Honor. I understand why it might at first blush seem a surprising

THE COURT: Yeah. Why? I mean it's --

can elaborate.

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position, but it's really a combination of the nature of the charged offense as well as conduct by the Defendant since the date of his indictment.

Starting with the latter, Mr. Ocasio was indicted on May 20th and an arrest warrant issued on that date. By no later than May 25th, Mr. Ocasio was aware of that arrest warrant. And the special agent on the phone today from the FBI called him and asked him or advised him that there was an arrest warrant and advised him that he needed to surrender. Mr. Ocasio said that he would surrender the following day. Mr. Ocasio did not surrender the following day.

On June 7th, about a week and a half later, Special Agent Buckner called Mr. Ocasio again and asked if he was planning to surrender. Mr. Ocasio said that there had been a death in the family and that he was arranging his affairs.

I've confirmed that there was a death in the family. I'm certainly not minimizing the toll that that takes on Mr. Ocasio. However, that was on Jun 7th and it's now August 4th and he did not self-report in that nearly two-month period and made no indication that he would.

Further, on June 16th, the FBI, on a unknown to Mr. Ocasio, contacted him and asked if they could purchase two temporary license plates, two temporary Texas license plates, which is the exact nature of the crime for which he has been indicted. Mr. Ocasio responded positively, gave them

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instructions about what information he needed in order to facilitate their obtaining those temporary license plate, and gave them information about how they could pay him. In short, he continued to commit the crime for which he is indicted after he has been indicted as recently as mid-June.

Yesterday after he was arrested by the FBI and NYPD officers, he told them that apart from his conversation with the FBI on separate incidences he has continued to engage in the scheme for which he is indicted. He's completely undeterred by the indictment in committing the criminal conduct that is the basis for the indictment.

Secondly and relatedly, the nature of the crime is not -- it's not an unrelated wire fraud that has nothing to do with whether or not he's going to appear in court. The nature of the crime is Mr. Ocasio facilitates people obtaining temporary license plates under false pretenses and with potentially false names. He has stated to law enforcement that he has still to this day a number of connections in Texas with whom he has worked in the past to obtain these temporary license plates.

And what that means functionally is he could obtain a temporary license plate from Texas in somebody else's name that would appear completely legitimate. He could put it on a car and he could drive anywhere. And if law enforcement were to pull him over and put that license plate into their system, it

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would not hit back on Octavian Ocasio, fugitive. It could hit back on any other name that he wanted.

And so I think that you take the nature of the crime and his recent conduct since being made aware of the indictment and the arrest warrant into account. And I think that there really is significant risk that he will not appear in court.

And I don't think that -- I think that that's significant and I don't think that the bail package posed by the defense counsel or contemplated by pre-trial services would sufficiently mitigate that risk.

THE COURT: Mr. Sundaram. You're muted.

MR. SUNDARAM: Sorry. The Government has presented some reasons why I think that its application for detention is, you know, maybe not as surprising as it would seem. But looking at the pre-trial services recommendation of release on a substantial bond cosigned by my client's brother with the usual travel restrictions and also a home curfew with location monitoring, I think first I would say that remains a strong enough condition to satisfy the bail statute requirements which are simply that there are conditions that have been put into place that would reasonably assure his return to court.

And I think that what the Government is really focusing here is flight. I know that they're alleging that he continued of the charged criminal activity, or at least some of it, after the time of the indictment. The first time Mr.

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Ocasio actually saw the indictment and really knew what the charges were was today when I read it to him and I discussed it with him. Notably, even if Mr. Ocasio was not as responsive as he should have been, and it appears he had a -- what the Government has verified was a valid and truthful reason back in June was just, you know, not that long ago.

Since that time and during the entire time since May and since the indictment, Mr. Ocasio has continued to reside at his residence at 233 Rockaway, I think Rockaway Boulevard, with his sister. And this is a place where he's lived for 30 years. It's the family house. It's owned by one of his brothers. So you know, the Government has not made any real case for a risk or a likelihood of flight given the fact that Mr. Ocasio has remained in his residence. And it appears from the removal complaint that the Government had all of that information and that's how they -- and they arrested him in the town where he lives when he was out at a restaurant. They could have arrested him at his home. They knew where that was, so there's no risk of flight here.

And furthermore, I think the Court has the names, but we have an additional surety. Mr. Ocasio gave pre-trial the information relating to his brother because he knew his phone number by heart, but his brother in turn put us in touch with another surety that Mr. Ocasio had mentioned as a possible surety to me. And that's his cousin who makes \$80,000 a year.

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The brother makes \$73,000 a year. They're both very strong sureties with very strong relationships to Mr. Ocasio. Both of them are willing to sign the bond.

And, you know, I think that having the case actually presented in terms of having the indictment, having seen the indictment, and having a court date that will be set presumably pretty soon in the Southern District of Texas, all we're asking for at this point is that Mr. Ocasio be given an opportunity to appear on that case. From that point on, obviously the Southern District of Texas can decide whether there are any —whether those conditions or further conditions are required to assure his appearance in court. But I think it would carry a lot of weight if he were given the chance to show that he would appear in court, whether it's in person or remotely.

And for the Court's information, I looked at the docket sheet in the Southern District of Texas and it shows that Ms. Lopez (ph.) was the, I think -- appears to be, if there was a ringleader in this scheme, this alleged scheme, she appears to be that person more so than Mr. Ocasio. She was released and she remains on release on an unsecured \$100,000 bond. This Defendant is not a U.S. citizen, has no lawful status in the U.S. And also according to the Government's filings in that case, she has a hybrid passport at home and a car parked in the garage with fraudulent temporary tags.

And she, according to the Government in that case,

has repeatedly left the U.S. to travel to Honduras illegally and according to the Government in that case was untruthful to pre-trial services and the magistrate judge about her international travel. And according to them, has collected and moved large amounts of proceeds in the form of cash, some of which she has sent to Honduras, which would be consistent with her apparent role as the ringleader here, the one who's -- whereas my client appears to be somebody who's receiving and sending documents by email. So that defendant is out on bond.

And I think if Mr. Ocasio is given the opportunity which he should be under the bail statute of appearing in court on that case, then he -- I expect that he too would be continued on bond. But I would be very concerned that if he's not even given that chance it's going to prejudice his ability to litigate that case and to be out, which he really should be based on his strong established community ties, two very strong sureties who are close to him, and the fact that we're at this point only asking the court to give him the opportunity to appear in that court. And from that point on, the bail would be left to that court.

And again, that defendant, I would note, has an ankle monitoring GPS condition. She does not appear to have a curfew or home detention. And I think that, you know, if the Court were to grant the pre-trial's request for both GPS monitoring and a curfew, that would add an additional measure of assurance

that he's going to appear as required in the other district.

And Your Honor, I do think it's very important here that he was in -- having been contacted by the authorities, not having a court date or anything like that, he did not make any attempt to evade them in terms of staying somewhere other than his residence.

THE COURT: And Mr. Sundaram, did you provide Lewis with the information for both proposed sureties?

MR. SUNDARAM: I have and they're both -- I believe both of them are on the phone.

attention to what I'm about to say. This is, in my mind, a close call. And while I am somewhat concerned about the allegation that Mr. Ocasio engaged in the continued criminal conduct after being informed that he had -- there was a warrant for his arrest for such conduct and there is a history apparently of bench warrants for Mr. Ocasio. I think that release is nevertheless appropriate. We will release Mr. Ocasio on \$100,000 bond with pre-trial services supervisions subject to random home and workplace visits, and a curfew with location monitoring as directed by pre-trial services.

Mr. Ocasio cannot apply for any passports or international travel documents. His travel will be restricted to New York City, Long Island, and the Southern District of Texas for the purpose of going to court and answering the

Case 1:21-mj-00901-RER Document 5 Filed 08/05/21 Page 14 of 22 PageID #: 40 charges. He will need to leave the residence as approved by 1 pre-trial and he must appear in court in Texas when required. 2 I'm just trying to pull up the bond here for a 3 second. It's not working. There it is. 4 Mr. Reyes, if you can unmute your phone, I'd like to 5 speak with you. 6 MR. REYES: Yes. 7 THE COURT: Okay. Mr. Ocasio is your brother? 8 MR. REYES: Yes. He is. 9 THE COURT: Actually, your answers have to be made 10 under oath. 11 MR. REYES, DEFENDANT'S WITNESS, SWORN 12 THE COURT: Okay. Did your brother's lawyer explain 13 to you what it means to sign a bond for someone's release? 14 MR. REYES: Yes. He did. 15 THE COURT: You understand that should your brother 16 be released and he violate the terms of the bond you would owe 17 the Government \$100,000? 18 MR. REYES: Yes. I understand. 19 THE COURT: They can garnish your wages, seize any 20 assets that you have to satisfy that amount. 21 MR. REYES: Okay. 22 THE COURT: You understand that, right? Okay. 23 MR. REYES: Yes. I do. 24 THE COURT: All right. What do you do for a living, 25

sir? 1 MR. REYES: I work sanitation --2 THE COURT: Oh, that's right. That's right. I read 3 that in the pre-trial services report. As well as your -- it 4 had your income in there, so I believe you are an acceptable 5 surety. 6 Last question. We would ordinarily all be in court 7 together and at the right time you would be asked to physically 8 sign the bond. Obviously we can't do that because we are all 9 in different locations, so will you permit me to sign the bond 10 on your behalf? 11 MR. REYES: Yes. I will. 12 THE COURT: Okay. All right. You can mute your 13 phone now. Is Mr. Roquemore (ph.) on the line? 14 MR. ROQUEMORE: I'm here, sir. 15 THE COURT: Okay. Same questions I'm going to ask 16 you. 17 MR. ROQUEMORE, DEFENDANT'S WITNESS, SWORN 18 THE COURT: All right. You are Mr. Ocasio's cousin? 19 MR. ROQUEMORE: Yes. 20 THE COURT: And what do you do for a living? 21 MR. ROQUEMORE: Therapy -- therapist. 2.2 THE COURT: Approximately how much do you make in a 23 year? 24 MR. ROQUEMORE: 80. 80,000. 25

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informing you of the charges and determining whether you should be released, and I have already made that determination. So you understand the terms of your release. You're actually going to get a copy of the bond, so you'll see exactly what it is.

THE DEFENDANT: Yes.

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THE COURT: -- and what they are. But you need to know that if you violate the terms of your release you can and likely will be detained and taken into custody to the Southern District of Texas to answer these charges. And your brother and your cousin would owe the Government \$100,000 in what we call joint and several liability. It means they can go after your brother alone or they could go after your cousin alone or both of them together to satisfy the 100,000. So they're staking their checks on you and you need to comply with your release terms.

THE DEFENDANT: Yes, Your Honor.

THE COURT: In addition, there are three things that you should know about the bond: 1) if you commit any crimes once you're released, that's a violation of the bond, so you could be detained on these charges plus face charges for any crimes that you commit. If you fail to go to court when you're supposed to, that's a violation of your bond. So you could be detained plus face a charge of bail jumping.

THE DEFENDANT: Yes, Your Honor.

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THE COURT: And if convicted of these underlying charges that you already face and bail jumping, your sentences could be served consecutively. That's one after the other.

And if you attempt to influence the testimony of any witness that may appear against you, that's a violation of your bond and it would also subject you to a charge of witness tampering. And if you're convicted of the underlying charges and witness tampering, your sentences could be served consecutively. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Will you give me permission to sign the bond for you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. All right. Last thing I believe is Mr. Weintraub, pursuant to Federal Rule of Criminal Procedure 5(f), I remind the prosecution of its obligation under Brady v. Maryland and its progeny to disclose to the defense all information known to the prosecution whether admissible or not that is favorable to the Defendant and material either to guilt or to punishment. The prosecution must make good faith efforts to disclose such information to the defense as soon as reasonably possible. I'll be entering a written order more fully describing this obligation and the possible consequence of failing to meet it and I direct the prosecution to review and comply with that order.

Does the prosecution confirm that it understands its 1 obligations and will fulfill them? 2 MR. WEINTRAUB: Yes, Your Honor. 3 THE COURT: Okay. Great. 4 MR. WEINTRAUB: And if I may before we leave, I've 5 spoken to the United States DA in the Southern District of 6 Texas and they do want to appeal Your Honor's determination 7 today, so if I may request issue a stay of the order so that 8 they can appeal it through the Southern District of Texas. 9 MR. SUNDARAM: Your Honor, I'm opposing that request. 10 The Court obviously has discretion to do that or to simply let 11 the appeals process play out and they can request a stay from 12 the other district. 13 THE COURT: At 5:47 Texas time, unlikely. Let me ask 14 you this, Mr. Weintraub. Is what Mr. Sundaram told me about 15 the other defendant, Ms. Lopez, and her being released on bond 16 correct? 17 MR. WEINTRAUB: Your Honor, candidly, I have to say 18 that I am not sure. I have no reason to doubt Mr. Sundaram's 19 reading of the docket. I just am not familiar with Ms. Lopez 20 or Ms. -- I believe it was Ms. Lopez's circumstances. So just 21 to be candid, I don't know. 2.2 THE COURT: Okay. 23 MR. SUNDARAM: I think I have the docket number if 24 you wanted to check, but I could also put the documents I've 25

printed up on the screen if that helps.

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THE COURT: And she remains on bond?

MR. SUNDARAM: She is currently on bond.

THE COURT: And she was released at arraignment?

MR. SUNDARAM: She was released. It looks like she was released and then her -- there was a motion for a stay.

That motion was briefly granted and then it was lifted and the order of release was kept in effect. And so it looks like, according to the docket sheet, she was -- so there was an order of temporary detention on May 26th. And the Government in that case -- so there was an order that granted a stay on May 28th, so it looked like she was out for a couple of days. And then there was an order granting the stay and then there was an order lifting the stay on the same date, May 28th. So it appears from these papers that she was actually never really detained.

THE COURT: Okay. I will stay my decision to permit the Southern District of Texas to appeal it. You're going to need, Mr. Weintraub, to 475 Mr. Ocasio back to court tomorrow on the off chance that that appeal is not successful, in which case he will be released and we will send him -- we will give him the signed bond at that point. So they have a day.

So why don't we do then -- Lewis, send me a temporary order of detention and we'll put in the date, tomorrow's date, that he has to be produced.

Case 1:21-mj-00901-RER Document 5 Filed 08/05/21 Page 21 of 22 PageID #: 47 I'm putting it together, Judge. Will do. THE CLERK: 1 THE COURT: All right. And in the interim, I'll send 2 you a copy of the signed bond so if the appeal is not 3 successful tomorrow, all you need to do is once the marshals 4 bring him to bring him back, just give them the bond and they 5 can release him and he'll go to pre-trial. Won't even have to 6 have a proceeding. 7 THE CLERK: Okay. 8 THE COURT: All right. Is there anything else? 9 MR. WEINTRAUB: Not from the Government, Your Honor. 10 Thank you. 11 MR. SUNDARAM: I would just request that if the 12 Government is able to get the transcript of today's proceeding, 13 which I would think they would do for their motion, that they 14 would share a copy in case we need to respond to anything. 15 THE COURT: Why don't you do that, Mr. Weintraub? 16 MR. WEINTRAUB: Yeah. Sure. No problem. 17 THE COURT: Okay. Thank you, everyone. 18 MR. SUNDARAM: Thank you. 19 (Proceedings concluded) 20 21 22 23 24 25

Case 1:21-mj-00901-RER Document 5 Filed 08/05/21 Page 22 of 22 PageID #: 482 TRANSCRIBER'S CERTIFICATE I certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above entitled matter. Crystal Shomas Crystal Thomas, CET August 5, 2021